

**FILED**

**OCT 18 2005**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

FERNANDO GARCIA HURTADO,

Defendant - Appellant.

No. 04-10319

D.C. No. CR-03-00181-4-RCJ/LR

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the District of Nevada  
Robert C. Jones, District Judge, Presiding

Submitted October 11, 2005<sup>\*\*</sup>

Before: NELSON, T.G., WARDLAW, and TALLMAN, Circuit Judges.

Fernando Garcia Hurtado appeals the 100-month sentence imposed following his guilty plea to one count of conspiracy to distribute a controlled

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

substance, in violation of 21 U.S.C. §§ 846 and 841(a)(1), (b)(1)(B)(vii). We dismiss the appeal.

Hurtado waived in the plea agreement the right to appeal any aspect of the conviction or sentence, except any portion of the sentence that is an upward departure. Here, Hurtado was sentenced to the low-end of the applicable guideline range and the district court did not upwardly depart. Accordingly, we enforce the waiver and dismiss the appeal. *See United States v. Cortez-Arias*, 403 F.3d 1111, 1114 n.8 (9th Cir. 2005), as amended No. 04-10184, 2005 WL 2401877, at \*1 (9th Cir. Sept. 30, 2005) (declining to “vitiate the terms of [defendant’s] bargained-for exchange with the government”).

**DISMISSED.**